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AZ CORP COMMISSION
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Arizona Corporation Commission

DOCKETED

AUG 11 2011

Attorneys for Valle Vista Property Owners Association, Inc.

DOCKETED BY

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE
COMMISSION ON ITS OWN MOTION
INVESTIGATING THE FAILURE OF
TRUXTON CANYON WATER
COMPANY TO COMPLY WITH
COMMISSION RULES AND
REGULATIONS.

DOCKET NO. W-02168A-10-0247

**VALLEY VISTA PROPERTY OWNERS
ASSOCIATION, INC.'S BRIEF
REGARDING RECONSIDERATION**

Valle Vista Property Owners Association ("VVPOA") submits the following brief regarding reconsideration in this docket. Specifically, VVPOA addresses the arguments and positions taken by Truxton Canyon Water Company ("Truxton") in their June 16, 2011 Application for Modification and Reconsideration of Decision No. 72386 and its Reply filed on August 4, 2011. Truxton seeks reconsideration to "clarify that the Agreement between the Trust and the Association will not be reformed when it is transferred to the Company."¹ Truxton also seeks reconsideration regarding appointment of an interim manager.² In evaluating Truxton's request for reconsideration, VVPOA believes that the Commission would benefit from a report on recent occurrences relating to Truxton's water service to VVPOA and a discussion of past history.

As set forth below, VVPOA and its property owners respectfully request that the Commission deny Truxton's application for reconsideration and, instead, affirm Decision

¹ Truxton Application for Reconsideration at 1.

² *Id.*

1 No. 72386 in the best interest of the local community, VVPOA and its property owners.

2 VVPOA's primary concern relates to Truxton's request for reconsideration
3 regarding "reformation" of the Agreement between VVPOA and the Trust. On that issue,
4 it should be noted that Decision No. 72386 does not reform the Agreement. Rather, under
5 Decision No. 72836, the Agreement is transferred to Truxton so that VVPOA then
6 becomes a customer of Truxton. That recommendation stems from Staff's determination
7 that the Trust is not authorized or certificated to provide water service within Truxton's
8 CC&N. Once VVPOA becomes a customer of Truxton, VVPOA receives water service
9 from Truxton under Truxton's approved tariffs. In this docket, VVPOA was willing to
10 become a customer of Truxton assuming the Commission adopted the prevailing rate of
11 \$1.14.37 per 1,000 gallons as recommended by Staff. Decision No. 72386 adopts that
12 tariff rate applicable to bulk water service provided by Truxton to VVPOA and requires
13 Truxton to file a tariff reflecting that rate applicable to VVPOA.³

14 In no uncertain terms, VVPOA is a significant revenue source for Truxton.
15 According to Truxton's 2009 Annual Report, Truxton had \$313,315 in total revenues and
16 \$350,723 in total operating expenses. VVPOA paid \$265,511 to the Trust in 2009-2010.
17 From 2000-2011, VVPOA paid the Trust over \$2,155,869 for water service.⁴ As such, it
18 is critical for both VVPOA and Truxton that VVPOA's rates for water be set at a rate
19 which will allow VVPOA to continue operations. In order for VVPOA to remain viable,
20 it is imperative that tariff rate of \$1.1437 would apply going forward.

21 Further, VVPOA accepted the transfer to Truxton assuming that VVPOA is only
22 required to pay for water that it actually uses—i.e., that VVPOA be treated as any other
23 customer of Truxton. This is the prime issue in dispute relating to Truxton's request for

24 ³ Decision No. 72386 at 17-18.

25 ⁴ Given the multitude of compliance problems, water leaks and ADEQ violations, one
26 can't help but wonder whether the Trust re-invested any of that revenue in necessary
improvements to the water system.

1 reconsideration. The Agreement between the Trust and VVPOA states that the Trust
2 “shall provide the VVPOA a minimum of TWO HUNDRED MILLION (200,000,000)
3 gallons of water annually during the terms of this agreement for use in irrigating the
4 VVPOA golf course, park area, swimming pool, entry way, highway landscaping and
5 other common areas within the subdivision.”⁵ As stated at hearing, VVPOA has made
6 substantial efforts to reduce its water usage. In 2009, VVPOA used 199,256,400 gallons
7 of water, but in 2010, VVPOA only used 150,461,800 gallons of water—a 25%
8 reduction.

9 Under Decision No. 72386, instead of providing water service under the
10 Agreement, Truxton would provide water service to VVPOA under the tariff required to
11 be filed by Truxton, which would employ the \$1.1437 per 1,000 gallon rate plus \$0.35 per
12 1,000 gallons for water provided from sources other than the Hackberry Well Field (i.e.,
13 the Valley Well).⁶ Staff and VVPOA believe that such tariff would not allow Truxton to
14 bill VVPOA for 50,000,000 gallons of water that VVPOA does not need or use.

15 Truxton, however, maintains that it should be allowed to bill VVPOA for
16 200,000,000 gallons of water, even if VVPOA only needs or uses 150,000,000 gallons.
17 VVPOA urges the Commission to deny reconsideration on this issue for several reasons.
18 To start, this entire docket stems from Staff’s conclusion that the Trust is not legally
19 authorized or certificated to provide water to VVPOA within Truxton’s CC&N area.
20 Once VVPOA becomes a customer of Truxton, that necessarily means that Truxton will
21 provide water service to VVPOA like any other regulated Arizona utility—i.e., Truxton
22 would charge the tariff rate for all water used by its customers. VVPOA is not aware of
23 any other Arizona water utility that is allowed to charge customers for water that is not
24 used or needed by customers. The Commission should not adopt any such policy or

25 ⁵ Agreement at 1, ¶ 2(b).

26 ⁶ Decision No. 72386 at 17-18, Exhibit C, Stipulation Agreement at Attachment A ¶¶ 6-8.

1 precedent in this case. Aside from being incredibly wasteful, the Commission should
2 recognize VVPOA's efforts to reduce its water use. VVPOA does not believe that the
3 Commission will benefit from rehearing on this issue and the Commission should
4 summarily deny Truxton's request for reconsideration relating to its ability to charge
5 VVPOA for water that VVPOA does not need or use.

6 At the hearing on January 18, 2011, Truxton and Staff provided a Stipulation
7 Agreement with a list of agreed "Recommendations and Timelines." Truxton's attorney
8 was involved in drafting, reviewing and revising that Stipulation Agreement. Any
9 suggestion that Truxton and the Trust were pressured into the Stipulation Agreement is
10 unsupported. On this record, there simply is no basis or justification for granting
11 reconsideration of Decision No. 72386. Instead, the Commission should affirm Decision
12 No. 72386 and authorize Commission Staff to take necessary steps to ensure Truxton's
13 and the Trust's compliance with that decision.

14 Aside from these issues, VVPOA asks the Commission to consider community
15 concerns about potential rate increases that would put VVPOA out of business, and cause
16 substantial impacts to the community, including lowering of property values. VVPOA,
17 like any other regulated utility customer, should only pay for water that it actually needs
18 and uses. All such water use would be metered by Truxton and VVPOA would pay for
19 water used at the applicable tariff rate of \$1.1437 per 1,000 gallons.

20 As stated in Decision No. 72386, Truxton also would not be allowed to apply a
21 CPI adjuster and would not be allowed to charge a "Franchise Fee" or "Superfund Tax".⁷
22 The Trust and VVPOA entered the current agreement on April 24, 2002, and the parties
23 agreed to a five year option period in December 2006. The current Agreement is set to
24 expire on December 31, 2011.

25 Under the Agreement, the Trust has unilaterally applied a CPI adjuster to increase

26 ⁷ Decision No. 72386 at 17-18.

1 the contract rate each year. Those price increases have had a substantial impact on
2 VVPOA, which simply can't afford any further increases. VVPOA doesn't believe that
3 the cost of service to VVPOA actually increases with the CPI each year. The Trust also
4 has billed VVPOA for a "Franchise Fee" and "Superfund Tax," but never explained what
5 those charges were for or why they applied to VVPOA.

6 VVPOA intervened in this docket to protect its interests. As stated in testimony
7 provided by Mr. Bill Meehan on January 18, 2011, VVPOA has been hit extremely hard
8 by the economy, which has depleted financial reserves and left VVPOA in a precarious
9 financial position. VVPOA's cost of water for its various community facilities is critical
10 to its ongoing viability and that of the Valle Vista community.

11 Under these circumstances, Truxton's attempts to avoid the requirements of
12 Decision No. 72386 are even more troubling to VVPOA and its homeowners. Recent
13 actions of the Trust and Truxton raise substantial questions about ongoing water service.
14 After Decision No. 72386 was issued on May 27, 2011, VVPOA considered itself a
15 customer of Truxton and attempted to comply with the requirements of the decision. At
16 the end of June 2011, however, the Trust/Truxton flat refused to comply with the
17 Decision and the Trust demanded payment from VVPOA under the terms of the
18 Agreement and threatened to cut off water service to VVPOA if it refused. Put simply
19 the Trust demanded that VVPOA make payment solely to the Trust and not Truxton in
20 June 2011. That situation repeated itself in July 2011, when the Trust again demanded
21 payment from VVPOA. As a result, Truxton was deprived of two months of water
22 revenue from VVPOA, revenue that certainly could be used to address system problems.

23 Even worse, the Trust failed to provide water service to VVPOA in July-August
24 2011. In July 2011, two of the Trust's wells in the Hackberry Well Field and the Valley
25 Well, which is used to provide water service to VVPOA during the summer, failed and
26 went out of service. The circumstances surrounding this service outage are set forth on

1 the "Neal Well Documentation" attached as Exhibit A to this brief. As a result, the Trust
2 failed to provide water service to VVPOA for a period of two weeks in the heat of the
3 summer, which has prevented VVPOA from maintaining water service to its golf course.
4 The substantial monetary and other harms to VVPOA are set forth on the attached
5 documentation.

6 For these reasons, VVPOA believes that the Commission should deny Truxton's
7 request for reconsideration, affirm Decision No. 72386 and enforce that Decision against
8 Truxton and the Trust.

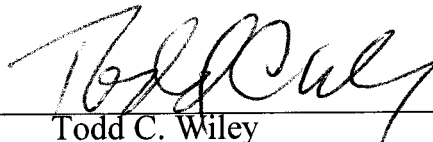
9 RESPECTFULLY SUBMITTED this 11th day of August, 2011.

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An original and 13 copies
of the foregoing was filed
this 11th day of August, 2011,
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was hand-delivered this 11th
day of August, 2011, to:

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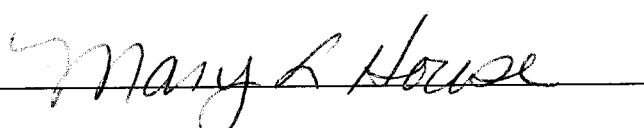
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EXHIBIT

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The Valley Well went down on 7-19-2011. Marcus Neal called me and stated that he thought the well was permanently damaged. He could not get it running at all. This was approximately 6:00pm.

7-20-2011 The Neal's mechanic stated to Marcus that the engine had sucked an exhaust valve on the Number One Cylinder. In order to be fixed properly they were going to have to pull the heads off the well motor and re-do the valve seats. I then notified the Board of Directors of the situation.

7-22-2011 Marcus Neal called me and told me that the heads were going to be pulled on Monday by a mechanic out of Phoenix and resurfaced in the Phoenix area. He also told me that "Little Hackberry" well was out of commission as well.

7-25-2011 Mike Neal called me and stated that the heads were pulled on Saturday and that the mechanic was waiting on parts. He then stated that the heads should be re-surfaced by Wednesday. He thought at that time they would be able to get the well back up and running by the 28th of July.

7-27-2011 Mike Neal called me and stated that the mechanic was still waiting on parts and that the date had been moved to Saturday the 30th.

8-1-2011 I called Mike Neal and asked for an update since the well was obviously still not functional. He stated that the parts had to be shipped from a ware house in L.A. to Phoenix and that the well should be fixed soon.

8-3-2011 Mike Neal called and told me that the mechanic out of Phoenix would be on-site on 8-4-2011 with all the necessary parts to fix the well motor.

8-4-2011 The mechanic was on-site all day without being able to finish the re-build of the well motor. He stated that he would back in the morning and would be finished before noon.

8-5-2011 The mechanic was back on-site to finish re-building the well motor at 6:00am. During the finishing process the mechanic noticed that he was missing the exhaust-water-jacket gasket. It would be shipped over night to Phoenix and he would have to head back down and pick it up. He hoped at that time he could return the next day and get the well up and running.

8-6-2011 The well motor was up and running at 6:30pm. It was putting out approximately 900gpm. At this time "Little Hackberry" well is still down. Having this well up now will allow us to properly water by Monday night the 8th of August.

Summary:

During the time period from 7-19-2011 to 8-6-2011 Valle Vista golf course was receiving an average of 150,000 gallons instead of the normal 750,000 gallons. This has taken a dramatic effect on our golf course. Most, if not all, of our cool season grasses in fairways, roughs, and tees no longer exists. The turf grass defecation is obvious and the only thing remaining to "green-up" is Bermuda turf grass.